

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JOSH L. ANDERSON, )  
Plaintiff, )  
-vs- )  
LARRY E. KOPKO, et al. )  
Defendants. )

CIVIL ACTION # 04-135 ERIE

**PLAINTIFF'S OBJECTION TO MAGISTRATE JUDGE'S**

**REPORT AND RECOMMENDATION**

COMES NOW, Plaintiff, JOSH L. ANDERSON, in Pro Se, to respectfully submit the following Objections to Magistrate Judge's Report and Recommendation.

On December 12, 2005, the Magistrate Judge made a recommendation that Defendant's Motion to Dismiss Kopko and Ickert be granted.

Plaintiff OBJECTS to Magistrate Judge's recommendation and submits the following in support of.

Plaintiff's Amended Complaint states; "Officer Avenali and I have been having problems for over (2) two years now." [See Document #6, page 3, line 10]

During the two year period referred to herein, Plaintiff had made every effort available to him in an attempt to put an end to the on-going problem with Defendant Avenali.

Plaintiff wrote numerous letters to Defendant Kopko informing him that Plaintiff was having problems with Avenali. Kopko responded to one of his letters advising Plaintiff that Defendant Ickert was to initiate an investigation. [See Exhibit "A", attached hereto.] One other of many attempts to put an end to this threat was a written request to Ickert asking to speak with him about Avenali. [See Exhibit "B"]

Plaintiff also spoke with C/O Tim Hepinger, as well as other correctional officers, about what was going on between Plaintiff and Avenali, in hope of preventing any further altercations and/or possible harm to Plaintiff, but no preventative action was taken. [See Exhibit "C"] Therefore, it is shown that Kopko and Ickert were well aware of this persisting problem between Plaintiff and Avenali, but refused to take any action in keeping Plaintiff out of harms way.

Defendant Kopko is the Sheriff of Warren County, as well as the Warden of the Warren County Prison, where these conflicts and altercations occurred, some even resulting in criminal charges filed against Plaintiff. [Willing to provide Criminal Complaint upon request.]

Plaintiff in no way believes that Kopko was unaware of the actions taken by his office for events occurring in the County Prison that he has authority over and responsibility thereof.

Also attached hereto, in support hereof, is a grievance submitted by Plaintiff against Avenali, and Ickert's response thereto. [See Exhibit "D"]

As this Honorable Court can clearly see, Ickert was fully aware of the on-going problems created by Avenali, via Plaintiff's numerous written complaints and verbal allegations. See Exhibit "D" wherein Ickert states; "Because of the existing problems you have with Officer Avenali, she did apply the restraints tight."

Plaintiff deems that Kopko and Ickert's failure to act accordingly created a policy or custom permitting and/or encouraging Avenali's actions.

THEREFORE, based on Plaintiff's allegations and supporting facts submitted herein, Plaintiff respectfully pray this court to reconsider Magistrate Judge's recommendation to dismiss Defendants Kopko and Ickert from Plaintiff's Complaint.

December 30, 2005

DATE



JOSH L. ANDERSON [Pro Se]

FW-6915

1 KELLEY DRIVE

COAL TOWNSHIP, PA. 17866-1021



LARRY E. KOPKO  
SHERIFF

OFFICE OF THE SHERIFF  
WARREN COUNTY, PENNSYLVANIA  
407 Market Street  
Warren, Pennsylvania 16365

TELEPHONE  
(814) 723-7553  
FAX  
(814) 726-2113

November 6, 2003

To: Inmate Josh Anderson  
From: Sheriff Larry E. Kopko  
Subj: Your letter

A handwritten signature in black ink that reads "Larry E. Kopko".

This is to advise you that I am in receipt of your letter sent via the U.S. Mail to advise me that you are having problems with staff and that you are going to contact a whole myriad of agencies to investigate this office.

If you wish to initiate an investigation against this institution, that is your right to do, and I assure you that we will cooperate fully with any investigation that might occur.

I have directed the Correctional Supervisor, Captain Douglas A. Irvine and Deputy Correctional Supervisor Lieutenant Randy Ickert to initiate an investigation into the allegations that you have made. They will be contacting you for the names of the Correctional Officers that you are accusing since you failed to provide their names. I hope that you will cooperate with them fully on this investigation.

Since you feel that you are not being treated equally at this facility, I am willing to try to make arrangements with another institution to house you until your trial date arrives, if that is something you might be interested in. Let me know your decision on this.

Thank you for your letter. I hope to bring this situation to resolve in the very near future.

EXHIBIT - A

WARREN COUNTY JAIL INMATE REQUEST FORM	
TO: (Check One)	
<input checked="" type="checkbox"/> Corrections Supervisor <input type="checkbox"/> Counselling Office <input type="checkbox"/> Dep. Corrections Supervisor <input type="checkbox"/> Chaplain <input type="checkbox"/> Public Defender <input type="checkbox"/> Work Release Office <input type="checkbox"/> Jail Physician (Doctor) <input type="checkbox"/> Other	
FROM: <u>Tina Nelson</u>	
State your request or problem. BE SPECIFIC!	
DATE: <u>10-24-02</u>	
<u>I would like to speak to the S. P. C. Please call</u> <u>any time as few minutes! A.S.A.P. E. Shatner</u> <u>10/24/02</u> <u>Told Mr. Shatner I would talk to her</u> <u>if you are unsure who to contact, ask the Shift Supervisor.</u> <u>Form IRP RE. 5/95</u> <u>W. J. avon</u>	

**Avenali, Kate**

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From: Hepinger, Tim  
Sent: ~~Thursday, October 24, 2002 1:37 PM~~  
To: Avenali, Kate; Burns, Robert; Ickert, Randy  
Subject: JOSH ANDERSON

I DON'T KNOW WHAT IS GOING ON WITH ~~JOSH WANTING TO TALK TO KATIE~~, BUT COULD THE THREE OF YOU GET ON THE SAME PAGE OF MUSIC AND LET HIM KNOW. HE IS GETTING DIFFERENT STORIES AND WOULD LIKE ONE ANSWER, WHATEVER IS DECIDED.

THANKS,  
HEPINGER

*EXHIBIT - C*

FORM J-16

WARREN COUNTY SHERIFF'S OFFICE / COUNTY JAIL  
INMATE GRIEVANCE REPORT FORM

TO BE COMPLETED BY AN INMATE INCARCERATED IN THE COUNTY JAIL TO SUBMIT A COMPLAINT CONCERNING THE CARE, CUSTODY, OR CONTROL PROCEDURES ADMINISTERED BY THE JAIL. A COPY OF THE JAIL POLICIES AND PROCEDURES FOR HANDLING INMATE COMPLAINTS IS FILED IN EACH GUARD STATION AND IS AVAILABLE FOR YOUR EXAMINATION UPON REQUEST.

COMPLAINTS CONCERNING SENTENCES, PAROLE AND PROBATION OR PROCEDURES OF OTHER CRIMINAL JUSTICE AGENCIES MUST BE SUBMITTED DIRECTLY TO THAT AGENCY.

Josh Anderson

Name of Complainant

May 15, 04

Block and Cell No.

Officer Katie L. Averai

Name of Employee if Complaint pertains to an Individual

1. Describe your complaint, state the facts including date, time, and place of occurrence. Use additional paper if necessary. List any witnesses and how and where they can be contacted.

On 12-29-03 officer Averai come to get me for a visit. After this is my last visit and belt on she made the belt as tight as she could. Then after going threw the (6) sit door she stepped me and tightened my belt cuffs so they could go no tighter.

Witnesses - Officer Breon and Sgt. Bruns.

2. Describe the specific solution or remedy desired by you.

Just sharing the type of things she does to get me upset!

3-2-04

Date of this Complaint

Josh Anderson

Signature of Complainant

DISPOSITION OF THIS COMPLAINT WILL BE NOTED ON THE BACK OF THIS FORM AND A COPY WILL BE RETURNED TO THE INMATE.

EXHIBIT - D

**DISPOSITION**

EXONERATED - the alleged conduct occurred but it was lawful and proper;  
 UNFOUNDED - the complaint was false or unfounded;  
 NON SUSTAINED - there was insignificant evidence to prove or disprove the allegation;  
 SUSTAINED - the allegation was supported by proper and sufficient evidence;

**EXPLANATION:**

The handcuffs and belt were applied tight as verified by Sgt. Burns when he checked and loosened them. But they were not cutting off your blood flow to your hands. Officers observed you pushing down on the cuffs leaving marks on your wrists. Because of the existing problems you have with Officer Avenali, she did apply the restraints tight as to make sure you could not manipulate or free your hands from the cuffs. Officers are instructed to take extra security precautions when dealing with you and that is what she did.

**ACTION TAKEN OR TO BE TAKEN:**

Officer Avenali was counseled by Sgt. Burns the same night this occurred and was instructed on how to apply restraints safely and effectively without them being overly tight.

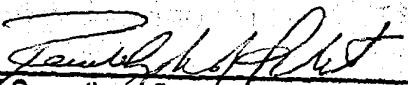
  
Signature of Correctional Supervisor or Sheriff

EXHIBIT - D 2

3/9/04

Date